ORIGINAL (5)

NO. 98-5021

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

MICHAEL W. RIGGS, PRO SE PETITIONER,

V.

THE STATE OF CALIFORNIA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

REPLY BRIEF OF PETITIONER IN OPPOSITION TO BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CIRTIORARI

MICHAEL W. RIGGS C-77955
PRO SE PETITIONER

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In Proprias Persona

49 pp

QUESTIONS PRESENTED ON REPLY BRIEF

#1: WHETHER THE COURT SHOULD GRANT CIRTIORARI AND REVIEW THE DUE PROCESS AND EX-POST-FACTO CHALLENGES TO THE NEW CALIFORNIA THREE STRIKES LAW;

A. WHEN THE CALIFORNIA COURTS OF APPEALS HAVE ALREADY DECIDED THESE ISSUES ? (As petitioner was informed by Appellate Counsel);

B. WHERE THE CALIFORNIA SUPREME COURTS "POSTCARD DENIAL" IS WITHOUT CITATION TO PROCEEDURAL DEFAULT, OTHERWISE ON THE MERITS, BECAUSE RAISING FEDERAL CONSTITUTIONAL ISSUES NOT RAISED ON DIRECT APPEAL (federalizing) HAS BECOME THE NORM IN CRIMINAL CASES; AND BECAUSE THE PROPER APPLICATION OF THE 'THREE STRIKES LAW' IS OF SUBSTANTIAL INTEREST TO THE PUBLIC AND TO HUNDREDS OF SIMILARLY SITUATED DEFENDANTS SENTENCED UNDER THIS LAW EACH MONTH IN CALIFORNIA?

#2: WHETHER IT IS CRUEL & UNUSUAL PUNISHMENT IF THE THREE STRIKES LAW 25 to LIFE SENTENCE IS "GROSSLY DISSPROPORTIONATE" TO THE INSTANT OFFENSE OF PETTY THEFT OF FOOD (vitamins);AND BECAUSE;

A. THE RESPONDENTS ALLEGATIONS OF SOME PRIORS ARE INADMISSABLE AS DOUBLE HEARSAY, NOT PLEAD, TRIED, PROVEN, AND/OR STRICKEN BY THE COURT ?; (Is the PROBATION REPORT HEARSAY)

B. OTHER SIMILARLY CHARGED DEFENDANT'S WITH "NON-SERIOUS" 3rd STRIKE OFFENSES CALLED "WOBBLERS" WHO HAVE CONSIDERABLY MORE EXTENSIVE "SERIOUS" OR "VIOLENT" PRIOR CONVICTIONS HAVE RECEIVED JUDICIAL DISCRETION AND INTERVENTION BY CALIFORNIA JUDGES TO REDUCE THEIR SENTENCES TO AVOID THIS GROSSLY DISPROPORTIONATE THREE STRIKES SENTENCE OF 25 to LIFE, IN THESE TYPE CASES ?

TABLE OF CONTENTS TO REPLY BRIEF

STATEMENT OF CASE

After a Trial by Jury, petitioner was convicted of Petty Theft of a food item, a bottle of vitamins., from Albertson's Supermarket. The amended information alleged that petitioner was charged with Petty Theft with a Prior out of Los Angeles Cs.#A-577867 from a 4 count conviction of 2nd Degree Robbery which was used to elivate the Petty theft to a felony.(CT 136),(Penal Code §666) .

The information then alleged that appellant had suffered 3 other prior convictions of 2nd Degree Robbery, out of the same Los Angeles Cs. # A-577867 which were strikes within the meaning of the Three Strikes Law Penal Code section 667, subdivisions (c) and (e) and Penal Code section § 1170.12.

The information also alleged prior prison terms within the meaning of penal code § 667.5(b), which were later STRICKEN by the court.(CT 328)(Priors #1 thru #3 are stricken)(RT 333). Petitioner was sentenced to "25 to Life" where he must serve a minimum of 25 years before a parole Board review of Parole* Suitability (People v. Stoffle 45 Cal. App.4th 417 (1996) under the relevant THREE STRIKES LAW based upon TWO of the FOUR 2nd Degree Robbery convictions out of the single case out of Los Angeles (#A-577867-supra).(CT 324-328)(RT 333),**(PETN.p.#4)**, **which were used as "strikes".**

In December, 1997, petitioner submitted a PRO PER SUPPLEMENTAL BRIEF (App.#A2) to appellate counsel,(RESP.APP.#E-66 to E-83), which appellate Counsel submitted in the CALIFORNIA SUPREME COURT by his proof of service **(Resp.App.#E-83)** dated JAN.13, 1998.

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* Indeterminate sentenced prisoners in California are routinely denied at the first Parole Eligibility Hearing upon expiration of the minimum term. Petitioner is 47 yrs. of age and will be over 7(further Parole Board Hearings may be set-off for 3 to 5 years between hearings under California Law, until parole is granted.

On December 17, 1998 the California Court of Appeal* affirmed petitioners conviction in an unpublished Opinion.**(Resp.App.#B-2-15).****

On February 25th, 1998 the California Supreme Court "Denied" the Petition for Review by Appeallate Counsel and the Pro Per Supplemental Petition for Review, mailed by Appellate Counsel: (supra), without citation to any proceedural default.**(Resp.App.#A-1), (App.#A1-2.).**

Petitioner seeks Cirtiorari from the California Supreme Court under the U.S. SUPREME COURT'S original jurisdiction 28 U.S.C.§1257 in Proprias Persona, and Moves for Appointment of Counsel if Cirtiorari is granted. (PETITION).

On AUGUST 21, 1998 The CLERK OF THE SUPREME COURT OF THE UNITED STATES notified the RESPONDENTS that the COURT had requested a RESPONSE be filed in this case on or before SEPTEMBER 21, 1998 .

The Respondent did not anser with a RESPONSE until NOVEMBER 02, 1998, and it is suggested that the response be considered for Dissmissal as untimely.

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* **The Record on Appeal included in the CERTIFIED CLERKS TRANSCRIPT At (CT 305-322) Certified Records of another case for comparison entitled PEOPLE OF THE STATE OF CALIFORNIA vs. EDDIE FRANK PEREZ (case No.#CR-65406) out of the same JURISICTION out of RIVERSIDE County which is referenced and attached as (APP.#C-26-35) for showing of GROSS DISPROPORTIONALITY compared to petitioners sentence and recidivist factors...etc..**

** **When referring to the RESPONDENTS APPENDICES IN OPPOSITION, Petitioner will use the term (Resp.App.#) citing the appendice number used by respondent the Calif. Attorney General, otherwise petitioner will cite to the PETITION (PETN.__) or APPENDICES(App.__) as attached Appendices below referenced.**

I.
DECISIONS BELOW

1. The CALIFORNIA SUPREME COURT "DENIAL" of the PETITION FOR REVIEW by **POSTCARD DENIAL** stating "Appellant's petition for review DENIED" without citation to proceedural default is attached as APPENDICE #A1, and is referenced in the RESPONDENT's APPENDICES as #A1. With reference thereto PETITIONER'S DECLARATION is attached as APPENDICE #A2.

2. With reference to above, and in RESPONSE and GENERAL DENIAL to the FIRST QUESTION presented in RESPONDENTS BRIEF, ATTACHED FOR THE COURTS CONVENIENCE,(as APPENDICE #B-3) please find the NINTH CIRCUIT COURT OF APPEALS (Cs.#96-99014) entitled **STEVIE LAMAR FIELDS-Petitioner v. ARTHUR CALDERON-Respondent 97 DAILY JOURNAL D.A.R.11757 (Sept.11,1997).**

After a DENIED PETITION FOR WRIT OF CIRTIORARI by the UNITED STATES SUPREME COURT on MARCH 20, 1995, in **FIELDS V. CALDERON 514 U.S. 1022(1995)** The NINTH CIRCUIT COURT OF APPEALS published an opinion in this case cited above reviewing cases by the CALIFORNIA SUPREME COURT to **'demonstrate, consideration of CONSTITUTIONAL CLAIMS not raised on direct appeal had become the norm"(D.A.R.supra ID at 11759)** and analizing **POSTCARD DENIALS (ID-Supra at #11759 note #6).**(APPENDICE #B-5 and #B-6).

II.
REASON FOR SUGGESTING REVIEW

Persuant to the United States Supreme Court Rules #17, #21.1(j), REVIEW is suggested because the ISSUES challenging the NEW CALIFORNIA 'THREE STRIKES LAW" have been well exhausted in the California Courts of Appeals repeatedly (PETN. at p.#8 footnotes)(REPLY BRIEF-below); because the "postcard denial" (Appendice #A1) by the California Supreme Court is without the regular citation to any proceedural default, and is "otherwise on the merits"...when "consideration of (federal) constitutional claims not raised on direct appeal had become the norm" (Fields v. Calderon-supra), HARRIS V. SUPERIOR COURT 500 F.2d. at 1128(when the order denying petition consists solely of word "Denied") and finally it is suggested the court exercise jurisdiction under 28 U.S.C. §1257 because the California Courts use of the NEW Three Strikes Law is in conflict with clearly established federal law and/or precedent, which is of **substantial interest** to the PUBLIC and about 170 to 180 **similarly situated defendants sentenced under the Three Strikes Law each month in California under the current rate persuant to California Department of Corrections and Department of Justice** reports.

III.
JURISDICTION

Petitioner invokes jurisdiction of the Court under 28 U.S.C. § 1257 on the grounds that his rights under the 8th, and 14th Amendments have been violated and upon the grounds that state-created Statuatory Law provides a LIBERTY INTEREST and such 'PENDANT' Due Process Guarantees thereby applicable through the 14th Amendment which was violated; that the state courts and California Supreme Courts application of the New Three Strikes Law is "contrary to and an unreasonable application of federal law and precedent [28 USC §2254-d]

(JURISDICTION CONTINUED)

... and violates the prohibition against EX-POST FACTO LAW under the U.S. CONSTITUTION ARTICLE #I, Section #10, Clause #1; 8th, 14th Amendments-U.S.C.A..

IV.

QUESTIONS PRESENTED

1. WHETHER THE COURT SHOULD GRANT CIRTIORARI AND REVIEW THE DUE PROCESS AND EX-POST-FACTO CHALLENGES TO THE NEW CALIFORNIA THREE STRIKES LAW;

A. WHEN THE CALIFORNIA COURTS OF APPEALS HAVE ALREADY DECIDED THESE ISSUES: (As Petitioner was informed by Appellate Counsel):

B. WHERE THE CALIFORNIA SUPREME COURTS "POSTCARD DENIAL" IS WITHOUT CITATION TO PROCEEDURAL DEFAULT, OTHERWISE ON THE MERITS, BECAUSE RAISING FEDERAL CONSTITIONAL ISSUES IN THE STATE SUPREME COURT NOT RAISED ON DIRECT APPEAL (Federalizing) HAS BECOME THE NORM IN CRIMINAL CASES; AND

C. BECAUSE THE PROPER APPLICATION OF THE 'THREE STRIKES LAW' IS OF SUBSTANTIAL INTEREST TO THE PUBLIC AND TO HUNDREDS OF SIMILARLY SITUATED DEFENDANTS SENTENCED UNDER THIS LAW EACH MONTH IN CALIFORNIA.

QUESTIONS PRESENTED
(Continued)

2. WHETHER IT IS CRUEL & UNUNSUAL PUNISHMENT IF THE THREE STRIKES LAW '25 TO LIFE' SENTENCE IS 'GROSSLY DISPROPORTIONATE' TO THE INSTANT OFFENSE OF PETTY THEFT OF FOOD (vitamins); AND BECAUSE:

A). THE RESPONDENTS ALLEGATIONS OF PRIORS ARE INADMISSABLE 'DOUBLE HEARSAY', NOT PLEAD, TRIED, PROVEN, AND/OR STRICKEN BY THE COURT ? ; (IS PROBATION REPORT HEARSAY)

B). OTHER SIMILARLY CHARGED DEFENDANT'S WITH "NON-SERIOUS" 3rd STRIKE OFFENSES CALLED "WOBBLERS" WHO HAVE CONSIDERABLY MORE EXTENSIVE "SERIOUS" OR "VIOLENT" PRIOR CONVICTIONS HAVE RECEIVED JUDICIAL DISCRETION AND INTERVENTION BY CALIFORNIA SUPERIOR COURT JUDGES TO REDUCE THEIR SENTENCES TO AVOID THE GROSSLY DISPROPORTIONATE THREE STRIKES SENTENCE OF 25 TO LIFE, IN THESE TYPE CASES ?.

V.
CONSTITUTIONAL AND STATUATORY PROVISIONS

The Fourteenth Amendment provides in part:
...Nor shall any State deprive any person of Life, Liberty, or property, without due process of law;

Article I, Section 10 provides in part:
No State shall... pass any... ex post facto law,...

The Eighth Amendment provides:
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

The California Three Strikes Law: is set forth fully in the respondents Appendices **(Resp.App.# C-16-33)(Calif.Penal Codes §667 and § 1170.12)(Calif.Assembly Bill 971(Stats.'94, (Ch.12,§2.)**

The Three Strikes Law "Determination Clause" (Cal.Penal Code §667-d): is set forth by the PETITION **(Petn. p.#8)** and **(Resp.App.#C-18) states:**

(CONSTITUTIONAL AND STATUATORY PROVISIONS)(Continued):

(THREE STRIKES LAW "Determination Clause")(Penal Code §667-d):

states in relevant part: (**Pendant**-Due Process is invoked)(**Petn.p.8-9**):

"Notwithstanding any other law and for the purposes of subdivisions (b) thru (i), inclusive, a prior conviction of a felony shall be defined as:

(1)-Any offense defined in subdivision (c) of Section §667.5 as a violent felony or any offense defined in subdivision (c) of Section § 1192.7 as a serious felony in this state. **The determination of whether a prior conviction is a prior felony conviction for purposes of section (b) to (i), inclusive, shall be made upon the date of conviction** and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts to a misdemeanor..."(Emphasis Added).

VI.

SUMMARY OF ARGUEMENT

The Attorney General responds that the PETITIONERS PETITION FOR WRIT OF CIRTIORARI should be dissmissed in that part of his claim challenging The New California THREE STRIKES LAW on Due Process, Pendant Due Process, and Ex-Post Facto Law violations under the U.S. CONSTITUTION, and also responds that the sentence of 25 to LIFE is not Cruel and Unusual Punishment.

Petitioner answers by **GENERAL DENIAL** (F.R.C.P.§8), reasserts and incorporates his original petition (F.R.C.P.§ 10c), suggests that this honorable court has jurisdiction to hear these significant matters under 28 U.S.C. §1257(3) unquestionably upon the above "REASONS FOR SUGGESTING REVIEW"(Supra-Sect.#II and III)., and REPLIES IN OPPOSITION AS FOLLOWS:

The U.S. SUPREME COURTS authority to grant CIRTIORARI under 28 U.S.C. §1257 is so broad that it has been rarely questioned. (Moore Fed. Practice §100.27 (2d.ed.1959).).

Petitioner argues and suggests that (See:DECLARATION as APPENDICE #2 after analyzing dozens of new appellate published opinions challenging the three strikes law, and after recieving appointed appellate counsels briefs, he requested and presented these issues for filing to counsel in the Court of Appeals (Respondents Appendices #E-66-83). Petitioner alleges that counsels response was proper when he determined that the Due Process issues challenging the "DETERMINATION CLAUSE" (Penal Code-667-d)'s express wording, & Notice requirements **((PETN.p.#8 footnote) had already been decided (Res Judicata)** by the Courts of Appeals

(citing: Peopl v. Sipe (95) 36 Cal. App. 4th 468; People v. Green (95) 36 Cal.App. 4th 280) challenging PRE-THREE STRIKES LAW priors, which the Courts of appeals have rejected. The latest opinion to reject it is People v. Moenius (98) 60 Cal.App. 4th 820. Moreover, counsels determination that he would submit these federal Issues in the California Supreme Court by filing petitioners PRO PER SUPPLEMENTAL BRIEF TO PETITION FOR REVIEW was Proper when (federalizing) raising federal issues based solely upon constitutional questions of law, in the California Supreme Court, not heard on direct appeal, had **become the norm**, in criminal cases, to Review significant federal questions and for puposes of exhaustion so that defendants may proceed to federal court in **PROPRIAS PERSONA**.(see:FIELDS v. CALDERON-supra;attached as APP.#B-3-6).

Petitioner finally suggests that the appellate attorneys regular practice above, and the California Supreme Courts regular practice of citation to proceedural default cases in postcard "DENIALS", and the California Supreme Court's failure to do so in this instance, (FIELDS-supra) is an approval of this practice, and is otherwise on the merits. Thusly the state's proceedural rule the respondent urges to bar consideration has **not "Been firmly established and regularly followed"(Fields-supra) citing: FORD v. GEORGIA 498 U.S. 411,424 (1991).** Although this may not be the case in CIVIL PRACTICE, the California Supreme Court has tended to be more liberal to **appointed** appellate counsels and **PRO-SE** petitioners in criminal cases.

SUBSTANTIAL INTEREST TO PUBLIC & OTHERS

Petitioner further suggests that these issues are of substantial Interest to the Public and about 170 to 180 similarly situated defendants sentenced under this New California Three Strikes Law each month in California, Per the Calif. Department of Corrections

and Department of Justice Reports (1998).

In conclusion, petitioner denies respondents contentions that that the petitioners 25 to LIFE sentence for Petty theft of food, is not GROSSLY DISPROPORTIONATE and thus could not violate the prohibition against CRUEL & UNUSUAL PUNISHMENT, which petitioner submits was acknowledged in **SOLEM v. HELM 463 U.S. 267; and acknowledged by 7 Justices in HARMELIN v. MICHIGAN 501 U.S. 957 (1991). Moreover as stated in the PETITION p.#19**, the federal Circuit courts continue to use the **"Gross Proportionality" test.**(PETN.p#19-supra).

... The sentence of petitioner is also Grossly Disproportionate when he is sentenced to 25 to Life for Petty Theft of Food, and the Appellat Record in this case indicates theat within the same California superior court Jurisdiction out of Riverside County where a similar defendant convicted of Petty Theft with a Prior by the name of EDDIE FRANK PEREZ in the matters of the PEOPLE OF THE STATE OF CALIFORNIA vs. EDDIE F. PEREZ (Cs.No.#CR-65406) attached Excerpt of Record (CT 305-323) as **(Appendice#C-6 to C-25)** which indicates, although he faced a three strikes Law sentence of 25 to LIFE, and had substantially more serious & violent felony conviction PRIORS, yet the Court used it's Discretion and Judicial Intervention to avoid the 25 to Life sentence persuant to Penal Code §1385 in the Interests of Justice and dissmissed or **"striked"** priors to sentence MR. PEREZ to only 6 years.

GENERAL DENIAL & REFERENCE TO ORIGINAL PETITION

In the interests of brevity except as disscussed above, upon the attached Statement of Case and APPENDICES attached hereto, petitioner DENIES respondents averments by **GENERAL DENIAL & REASSERTS the PETITION,** as if fully reasserted herein., and PETITIONER's REPLY BRIEF IN OPPOSITION shall be limited to the

ABOVE pleadings, reasons for suggesting review, and QUESTIONS PRESENTED.

Please note that the Court of Appeals Opinion noticed **(RESP.APP #B-13)** that the Petty Theft was motivated by homelessness & hunger, and that his priors were precipitated by the death of his son.*

PRAYER

Wherefore, petitioner PRAYS this Honorable Court will grant CIRTIORARI of the Issues presented in the PETITION; And appoint counsel if necessary for further proceedings.

Petitioner Declares that the above and foregoing or attached appendices, and any statements therein based upon best information and belief, is true and correct to the best of my knowledge, under penalty of purjury: Executed this 26th DAY of November 1998:

RESPECTFULLY: M. W. Riggs

MICHAEL W. RIGGS Esquire

PRO SE PETITIONER

ON REPLY BRIEF IN OPPOSITION TO RESPONDENTS BRIEF IN OPPOSSITION TO PETITION FOR WRIT OF CIRTIORARI

STATEMENT OF CASE FOLLOWS:

APPENDICES:

APPENDICE# A1 CALIFORNIA SUPREME COURT MINUTE ORDER "Denying Petition for Review"

APPENDICE #A2 DECLARATION OF MICHAEL W. RIGGS-PETITIONER

APPENDICE #B-3 to B-6: NINTH CIRCUIT CASE "FIELDS V. CALDERON" (for Courts Convenience)

APPENDICE #C-7 to D-31: EXCERPTS OF RECORD ON APPEAL

APPENDICE # D-32 : CLERKS CERTIFICATE OF RECORD

***THE RESPONDENTS REFERENCE TO citing (CT 255-256) is to the & is not accurate record of (10) PRIORS IN THE RECORD(App.#F-111) Probation Report(DOUBLE HEARSAY) actual convictions - proven(RT 295-97**

ORIGINAL

98-5021

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MICHAEL W. RIGGS,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent,

APPENDICES TO REPLY BRIEF IN OPPOSITION TO RESPONDENTS OPPOSITION TO THE PETITION FOR WRIT OF CIRTIORARI

MICHAEL W. RIGGS

PRO SE PETITIONER

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CONTENTS OF APPENDICES

APPENDIX A

Fourth Appellate-District, Division Two, No. E019488
S067322

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Respondent

v.

MICHAEL WAYNE RIGGS, Appellant

Appellant's petition for review DENIED.

GEORGE

Chief Justice

A-1

DECLARATION OF MICHAEL W. RIGGS
PRO SE PETITIONER

I, MICHAEL W. RIGGS, BEING OVER 18 YEARS, and the PRO SE PETITIONER, CERTIFY AND DECLARE THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY BELIEF AND KNOWLEDGE UNDER PENALTY OF PURJURY. BEING DULY SWONR AND SUBSCRIBED TO BELOW I DECLARE THAT:

After, analyizing CALIFORNIA COURT OF APPEALS DECISIONS for months due to the state of the New Three strikes law's dozens of challenges, and having read several challenging the DETERMINATION CLAUSE (Penal Code §667-d) based upon Due Process arguements and NOTICE requirements of Federal Due Process (See:PPl. v. Sipe (95) 36 Cal.App. 4th 468; and PPL. v. Green (95) 36 Cal. App. 4th 280; and the latest opinion rejecting these arguements PPL. V. MOENIUS (98) 60 CAL. App. 4th 820)) and EX POST FACTO Law federal chalenges that had been rejected also by the Courts of Appeals (PPL. V. HELMS (97) 15 Cal. 4th 608; PPL. V. MONGGE (97) 16 Cal. 4th 826 , which was granted CIRTIORARI filed 10/29/97), and after recieving Appellate Counsels BRIEFS ON APPEAL, and having noticed the absence of these issues I believed were incorrectly decided, I served by Mail the issues presented by **RESPONDENTS APPENDICES #E 66-83 requesting** appointed attorney James L. Crowder to file them in a Supplemental Brief on Appeal. Mr. Crowder did not due to the lateness in proceedings stating these issues had already been decided (Res Judicada) by every circuit within the California Court of Appeals, but that he would be able to file and exhaust the federal issues in the California Supreme Court in PRO PER SUPPLEMENTAL BRIEF TO THE PETITION FOR REVIEW which he has already prepared, because (federalizing) raising federal issues, raising only federal law, was the norm, in criminal cases.

DECLARATION CONTINUED

See; STEVIE LAMAR FIELD v. ARTHUR CALDERON 97 Daily Journal 11757-11760 (9th Cir./filed Sept.10, 1997)(Cs. No.#96-99014).

Appellate Counsel then filed and served my PRO PER SUPPLEMENTAL BRIEF TO PETITION FOR REVIEW by Mail,a month after I first presented it to him,on (FILED)(Proof of Servioce by JAMES L. CROWDER)(See: Resp.App.#E-83) on JANUARY 13, 1998.

THE ABOVE IS SWORN THIS 20th DAY OF November 1998, ABOVE, UNDER PENALTY OF PURJURY, AT CORCORAN, CALIFORNIA:

RESPECTFULLY EXECUTED: M. W. Riggs

MICHAEL W. RIGGS C-77955

PRO SE DECLARANT/PETITIONER

ORIGINAL

APP.#A-2(b)

CRIMINAL LAW AND PROCEDURE

California's Habeas Relief Bar for Error Not Directly Appealed Doesn't Preclude Federal Review of Defaulted Claims.

Cite as 97 Daily Journal D.A.R. 11757

STEVIE LAMAR FIELDS,
Petitioner-Appellant,
v.
ARTHUR CALDERON, Warden,
Respondent-Appellee.

No. 96-99014
D.C. No. CV-92-00465-DT
United States Court of Appeals
Ninth Circuit
Filed September 10, 1997

Appeal from the United States District Court for the Central District of California

Dickran M. Tevrizian,
District Judge, Presiding

Argued and Submitted
June 19, 1997--
San Francisco, California

Before: Harry Pregerson, Charles Wiggins, and Thomas G. Nelson, Circuit Judges. Opinion by Judge Nelson

COUNSEL

David S. Olson, Carlsmith, Ball, Wichman, Case, & Ichiki, Los Angeles, California, for the petitioner-appellant.

Carol Federick Jorstad, Deputy Attorney General, Los Angeles, California, for the respondent-appellee.

T.G. NELSON, Circuit Judge:

Stevie Lamar Fields ("Fields") appeals the district court's order granting Warden Calderon's ("the State's") motion to dismiss eleven claims contained in Fields' second amended federal petition for writ of habeas corpus because they were declared procedurally defaulted by the California Supreme Court. We have jurisdiction under 28 U.S.C. § 1292(b). We vacate and remand.

PROCEDURAL HISTORY

In 1979, Fields was convicted of murder and sentenced to death.1 In 1983, his conviction and sentence were affirmed by the California Supreme Court on direct appeal. People v. Fields, 673 P.2d 680 (Cal. 1983), cert. denied, 469 U.S. 892 (1984).

In 1984, Fields filed a petition for writ of habeas corpus in the California Supreme Court. After a hearing on the issue of whether Fields' attorney provided ineffective assistance, the California Supreme Court denied the petition in 1990, holding that Fields suffered no prejudice from his attorney's alleged incompetence. In re Fields, 800 P.2d 562 (Cal. 1990), cert. denied, 502 U.S. 845 (1991).

On May 25, 1993, Fields filed a federal petition for writ of habeas corpus in district court. On July 29, 1993, the California Supreme Court decided two cases that are critical to the resolution of this appeal: In re Clark, 855 P.2d 729 (Cal. 1993), and In re Harris, 855 P.2d 391 (Cal. 1993).

On August 2, 1993, Fields filed an amended federal habeas petition. The State moved to dismiss the petition on the grounds of procedural default. Finding unexhausted claims, the district court stayed federal proceedings on October 20, 1993, in order to allow Fields an opportunity to exhaust his state claims.

On January 14, 1994, Fields filed a second petition for writ of habeas corpus in the California Supreme Court. The State moved for denial of the state petition on procedural grounds. On October 14, 1994, the California Supreme Court denied Fields' second state habeas petition. In the portion relevant to this appeal, the California Supreme Court ruled:

The following claims are denied on the procedural ground of untimeliness, in that they could have been, but were not, raised on appeal or in the first habeas corpus petition: the claims set forth in parts IX (A, B, E, F, G), X (B, C, F, G, H, I), XV, XVIII, XXI (as to the claim relating to the instruction on suppression of evidence), XXIII, XXIV, XXV, XXVI, XXX, XXXI. (In re Harris (1993) 5 Cal.4th 813, 829; In re Dixon (1953) 41 Cal.2d 756, 759.)2

On March 20, 1995, the United States Supreme Court denied certiorari. Fields v. California, 514 U.S. 1022 (1995).

On March 21, 1995, Fields filed a second amended habeas petition in the district court. On July 31, 1995, the State filed a motion to dismiss the claims denied by the California Supreme Court's order due to procedural default. After a hearing, the district court granted the motion on June 10, 1996, and dismissed all of the claims to which the State had asserted a procedural bar. On July 30, 1996, the district court denied Fields' motion for reconsideration and granted his motion for interlocutory appeal. On August 27, 1996, we granted Fields permission to take an interlocutory appeal of this dismissal order.

DISCUSSION

"The district court's dismissal of the petition for writ of habeas corpus on the ground of state procedural default involves an issue of law that we review de novo." Morales v. Calderon, 85 F.3d 1387, 1388 n.6 (9th Cir.), cert. denied, 117 S. Ct. 500 (1996). See also Hunter v. Aispuro, 982 F.2d 344, 346 (9th Cir. 1992).

The issue for decision is whether the California Supreme Court's Dixon rule serves as an adequate and independent state ground for its denial of eleven claims in Fields' habeas petition. In Dixon, the California Supreme Court held:

The general rule is that habeas corpus cannot serve as a substitute for an appeal, and, in the absence of special circumstances constituting an excuse for failure to employ that remedy, the writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction.

Ex parte Dixon, 264 P.2d 513, 514-15 (Cal. 1953) (In Bank) (citations omitted). If the Dixon rule provides an adequate and independent state ground for the California Supreme Court's decision, Fields "has defaulted procedurally on the affected claims and cannot raise them in federal court unless he shows cause and prejudice or a fundamental miscarriage of justice." Morales, 85 F.3d at 1389 (citing Coleman v. Thompson, 501 U.S. 722, 750 (1991)). Because we conclude that the Dixon rule is not an adequate state ground to bar federal review of Fields' defaulted claims, we will not address Fields' alternative argument that the Dixon rule is not an independent state ground sufficient to bar federal review.3

APPENDICE #B-3

A. The Trigger Date

Before addressing the adequacy of the Dixon rule, we must first determine the proper date on which the rule's adequacy is to be measured. The district court ruled that "[t]he Dixon rule was firmly established both at the time petitioner filed his second habeas petition [January 14, 1994] and at the time of his direct appeal [1981]." The State argues that the correct trigger date is October 14, 1994, the date on which the California Supreme Court denied Fields' second state habeas petition where the procedural bar at issue was actually applied. Fields argues that the correct trigger date is 1981, the time of his direct appeal, when the defaulted claims should have been raised. Our discussion of the 1981 date will demonstrate the flaw in the State's reasoning.

The Supreme Court of the United States has made it clear that a state's procedural rule used to bar consideration of a claim "must have been 'firmly established and regularly followed' by the time as of which it is to be applied." Ford v. Georgia, 498 U.S. 411, 424 (1991) (quoting James v. Kentucky, 466 U.S. 341, 348 (1984)). In NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 457 (1958), the Court refused to apply a state's procedural rule, because the defendant there could not be "deemed to have been apprised of its existence." In Ford, the Supreme Court said that applying the rule to Ford would "apply a rule unannounced at the time of[Ford's] trial . . . ." Ford, 498 U.S. at 424.

We have held that the proper time for determining whether a procedural rule was firmly established and regularly followed is "the time of [the] purported procedural default." Calderon v. Bean, 96 F.3d 1126, 1130 (9th Cir. 1996), cert. denied, 117 S. Ct. 1569 (1997). Therefore, we examine whether the state courts were regularly and consistently applying the relevant procedural default rule "at the time the claim should have been raised." Calderon v. Hayes, 103 F.3d 72, 75 (9th Cir. 1996), cert. denied, 117 S. Ct. 2532 (1997).

With respect to the Dixon rule, we have held that a relevant point of reference in assessing its application is the time at which the petitioner "had an opportunity to raise the claims on direct appeal." Id. See also Bean, 96 F.3d at 1131 (evaluating the Dixon rule "at the time Bean filed his direct appeal"). Because the Dixon rule precludes collateral review of a claim that could have been brought on direct appeal, the procedural default, though announced by the California Supreme Court when the habeas petition is denied, technically occurs at the moment the direct appeal did not include those claims that should have been included for review. In this case, that moment is 1981, the year of Fields' direct appeal.

In addition to avoiding the unfairness of applying a new rule retroactively, the requirement that the rule be in existence at the time of the claimed default, the 1981 appeal in this case, also gives the defendant and his counsel notice that the claims must be raised at that time. A trigger date of 1994, when the default rule was actually applied by the California Supreme Court, would not insure that Fields and his counsel knew in 1981 that all claims had to be raised then or be held to be procedurally barred. The requirement of notice thus dooms the State's attempt to use 1994 as the trigger date. A consistently applied rule in 1994 could not cure a lack of notice in 1981.

Fields does not attempt to demonstrate the inconsistent application of the Dixon rule in 1981 by employing the traditional method of providing "a representative sample of cases in which the default was either invoked or, at least, where it arguably might have been applicable but was disregarded." Fierro v. Calderon, No. CV-94-3198-LGB, at 15 (C.D. Cal. June 12, 1996) (citing Dugger v. Adams, 489 U.S. 401, 410 n.6 (1989); Johnson v. Mississippi, 486 U.S. 578, 587-89 (1988); Hathorn v. Lovorn, 457 U.S. 255, 263-64 & n.14 (1982)). Instead, Fields argues that the California Supreme Court's reevaluation of its procedural rules in the 1993 cases of In re Harris, 855 P.2d 391 (Cal. 1993), and In re Clark, 855 P.2d 729 (Cal. 1993), decided between Fields' direct appeal and the California Supreme Court's denial of eleven claims in his habeas petition due to procedural default, establishes that the Dixon rule was not regularly and consistently applied at the time of his direct appeal. We therefore turn to the question, not previously decided in this circuit, whether the Dixon rule and the standards governing its application were firmly established and consistently followed at the time of Fields' direct appeal in 1981.4

B. The Adequacy of the Dixon Rule

Under the adequate and independent state grounds doctrine, federal courts "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991). "[T]he procedural default doctrine is a specific application of the general adequate and independent state grounds doctrine." Wells v. Maass, 28 F.3d 1005, 1008 (9th Cir. 1994). The procedural default doctrine "bar[s] federal habeas when a state court declined to address a prisoner's federal claims because the prisoner had failed to meet a state procedural requirement." Coleman, 501 U.S. at 729-30.

Not all state procedural bars are adequate to foreclose federal review. For the procedural default doctrine to apply, "a state rule must be clear, consistently applied, and well established at the time of the petitioner's purported default." Wells, 28 F.3d at 1010 (citing Ford v. Georgia, 498 U.S. 411, 424-25 (1991)). See also Morales, 85 F.3d at 1390 ("Nor can a state preclude federal review by invoking procedural rules that the state does not apply consistently."). "The reason for these requirements . . . is that it is grossly unfair--and serves none of the purposes of respect for procedural rules--to forfeit an individual's constitutional claim because he failed to follow a rule that was not firmly established at the time in question." Bean, 96 F.3d at 1129 (quotations and citations omitted).

The mere fact that a state's procedural rule includes an element of discretion does not render it inadequate. Morales, 85 F.3d at 1392. We have held:

> It is true . . . that procedural rules need not be utterly mechanical. That the application of a rule requires the exercise of judicial discretion does not render the rule inadequate to support a state decision. . . . [J]udicial discretion is the exercise of judgment according to standards that, at least over time, can become known and understood within reasonable operating limits. Id. So long as standards governing the exercise of discretion are firmly established and are consistently applied, a state's procedural rule will be adequate to bar federal claims.

In re Harris, 855 P.2d 391 (Cal. 1993), involved a habeas petitioner who was attempting to assert a claim in habeas that had previously been heard and decided on direct appeal. California's procedural rule that generally prevents a petitioner from raising a claim for habeas review that was previously heard and decided on direct appeal is known as the Waltreus rule, derived from In re Waltreus, 397 P.2d 1001 (Cal. 1965).5 Although In re Harris directly involved the application of the Waltreus rule, the California Supreme Court made clear that "[m]uch of the following discussion also applies to the so-called 'Dixon rule,' which generally prohibits raising an issue in a postappeal habeas corpus petition when that issue was not, but could have been, raised on appeal." In re Harris, 855 P.2d at 395 n.3.

The In re Harris court began its discussion by noting that it has long been the rule in California that "habeas corpus will not lie ordinarily as a substitute for an appeal nor as a second appeal." Id. at 396. However, because multiple repetitions [of the rule] over time may tend to obscure the original purpose of the rule[,] . . . [and] large number[s] of petitions for writs of habeas corpus [are] filed in the courts of this state[,] the concomitant burden on the judiciary to evaluate the hundreds of petitions ultimately barred on procedural grounds [makes] it . . . important to reexamine and reiterate the purpose of the Waltreus rule.

Id. (citations and footnote omitted).

After a discussion of the history and policies underlying the Waltreus rule, the court discussed the "corollary" Dixon rule: Proper appellate procedure thus demands that, absent strong justification, issues that could be raised on appeal must initially be so presented, and not on habeas corpus in the first instance. Accordingly, an unjustified failure to present an issue on appeal will generally preclude its consideration in a postconviction petition for a writ of habeas corpus.

Id. at 398 (citing Dixon, 264 P.2d 513) (emphasis added). The court then embarked on an extended discussion of the "number of exceptions to the Waltreus rule" (presumably likewise applicable to the Dixon rule) that "have developed over the years." Id. The court explained that "we treat the question in some depth in order to provide needed guidance to the bench and bar." Id.

The only reasonable interpretation of this last statement is that the exceptions to the Dixon and Waltreus rules that had "developed over the years" had been obscured by their "multiple repetitions" in so-called "postcard denials" by the California Supreme Court.6 The court in In re Harris engaged in a lengthy discussion of four exceptions to the rules: (1) "fundamental constitutional error" (noting that "[h]ow to achieve the proper balance [between the state's interest in finality and the individual's right to a fair trial] has not . . . always been clear" and discussing a range of cases dating back to 1953), (2) "lack of fundamental jurisdiction" (distinguishing a 1987 case that appeared to prevent the application of this exception), (3) "acting in excess of jurisdiction" (discussing various claims where this exception has been raised and applied), and (4) "change in the law" (concerning an intervening judicial decision). See id. at 398-407. This extensive discussion would not have been necessary if the California Supreme Court had regularly and consistently applied the Dixon and Waltreus rules in previous cases. Instead, it is evident that, over the years, a number of situations developed that compelled the court to create exceptions to these rules in the effort to better formulate the "proper balance" between finality and justice in habeas review. Because the California Supreme Court explicitly acknowledged that its application of the Waltreus and Dixon rules had become obscured over the years by the development of a number of exceptions, requiring the court to provide "needed guidance to the bench and bar" regarding the application of these rules, we conclude that the Dixon rule is not an adequate state ground to bar federal habeas review of Fields' defaulted claims.

Our conclusion is strengthened by the California Supreme Court's opinion in In re Clark, 855 P.2d 729 (Cal. 1993), decided the same day as In re Harris. In re Clark involved the application of the procedural rules regarding the timeliness of habeas petitions and the doctrine of separate petitions, barring a petitioner from raising claims in a second habeas petition that could have been, but were not, raised in the first habeas petition. The court began its analysis with a general discussion of the historical development and application of the state's habeas procedural rules and the relevant exceptions. Though the court in In re Clark specifically declined to "clarify and limit the exceptions to the rules of In re Waltreus . . . and In re Dixon" because that question was to be decided in In re Harris, the court clearly intended its general discussion of California's habeas procedural rules to encompass the Dixon and Waltreus rules. Id. at 737-40, 741 n.8.

At the outset of its general analysis, the court explained:

> Before considering the possible merit of any claim, it is therefore appropriate to review the decisional and statutory law governing collateral attacks on judgments of conviction by petition for writ of habeas corpus. In addition, because no clear guidelines have emerged in our past cases, we consider when departure from those rules is warranted.

Id. at 737 (emphasis added). Later in the discussion, the court held:

> Our past decisions have thereby suggested that the rules against piecemeal presentation of claims and repetitious petitions are subject to undefined exceptions and that the court may be willing to entertain multiple collateral attacks on a judgment notwithstanding the potential for abusive writ practice.

Id. at 740 (emphasis added). The California Supreme Court could hardly have stated more clearly that the application of its procedural rules governing habeas petitions had become irregular and inconsistent. The opinions in In re Clark and In re Harris were intended to reestablish California's procedural rules governing state habeas petitions and clearly define and limit the applicable exceptions.

These decisions from the California Supreme Court in 1993, though certainly instructive on the question of the adequacy of the Dixon rule, do not answer the question of exactly when the Dixon rule and other rules had become irregular and inconsistently applied. As we noted earlier, Fields did not provide us with a survey of cases to demonstrate the inconsistent application of the Dixon rule in 1981, the time of his direct appeal.

However, we have conducted our own survey of California cases decided in the nine years preceding and including Fields' appeal (1973-1981). See Johnson v. Mississippi, 486 U.S. 578 (1988) (wherein the Supreme Court undertook its own survey of state court cases to determine the adequacy of a procedural bar). We note in passing that during those years, habeas petitions were initially filed in California Superior Court with rights of appeal to both the California Court of Appeal and the California Supreme Court. Therefore, published decisions from both of California's appellate courts are instructive as to how the Dixon rule was being applied. After we eliminated the cases that cited the Dixon rule, but did not actually involve the possibility of the rule's application, we were left with nine cases.7

The Dixon case itself involved a claimed denial of constitutional rights (an unlawful search and seizure and a coerced confession), and the rule that emerged from Dixon originally applied to such claims. "The same principles should apply even though the alleged errors involving factual issues relate to an asserted denial of constitutional rights." Dixon, 264 P.2d at 515.

As the nine cases from 1973 to 1981 demonstrate, however, consideration of constitutional claims not raised on direct appeal had become the norm, even in cases where the Dixon rule was clearly applicable. In only two cases (Jones and In re Ronald E.), was the Dixon rule

specifically applied to bar review of an issue. In one other case (In re Brown), the court stated the Dixon rule, and then construed the habeas petition as one for mandamus. In the other cases, the rule was not applied to block consideration of the defaulted issue. See, e.g., In re Walker, 518 P.2d at 1134 (assuming special circumstances exist in order to avoid the Dixon rule and reach the merits of the petition).

The Fuller case perhaps best represents the lack of guidance the Dixon rule was providing by 1981. The Court of Appeal said: We shall determine the case on the merits. It is true that as a general rule habeas corpus cannot serve as a substitute for appeal. (In re Dixon (1953 41 Cal.2d 756, 759, 264 P.2d 513.) The rule yields however, in special circumstances; courts do not always require the exhaustion of appellate remedies. (Ibid.; In re Black (1967) 66 Cal.2d 881, 887, 59 Cal.Rptr. 429, 428 P.2d 293; see Witkin, Cal.Criminal Procedure (1963) Habeas Corpus and Other Extraordinary Writs, § 797, p. 769.) Here, as in In re Black, supra, petitioner's continued confinement followed "somewhat unique" developments and the issue he presents is jurisdictional. It is also apparently novel. We are thus disposed to consider it.

In re Fuller, 177 Cal. Rptr. 233, 235-36 (Cal. Ct. App. 1981) (emphasis added).

The flexible application of the Dixon rule was also clearly illustrated in Duran:

The Attorney General points out Duran has a remedy through his appeal from the order revoking probation, and moves to dismiss the petition on that basis. While ordinarily habeas corpus is not a substitute for appeal (In re Dixon, 41 Cal.2d 756, 264 P.2d 513), this Court has discretion to issue the writ if it believes an appeal is not adequate, or if a prompt disposition is required in the interests of justice. (In re Baird, 150 Cal.App.2d 561, 563, 310 P.2d 454; Witkin, Calif.Crim.Proc., p. 770). This is such a case.

In re Duran, 113 Cal. Rptr. 442, 444 (Cal. Ct. App. 1974).

The California Supreme Court's 1993 decisions in In re Harris and In re Clark, combined with our independent survey of California case law for most of the decade preceding Fields' direct appeal in 1981, convince us that the Dixon rule is not an adequate state ground to bar federal review of Fields' defaulted claims.

CONCLUSION

For the foregoing reasons, the district court's order dismissing claims VII (A, B, E, F, G), VIII (B, C, F, G, H, I), XIII, XVI, XIX, XXI, XXII, XXIII, XXIV, XXVIII, and XXIX contained in Fields' petition for writ of habeas corpus is VACATED and the case is REMANDED to the district court for further proceedings consistent with this opinion.

VACATED AND REMANDED

1. The facts of the underlying crime can be found in People v. Fields, 673 P.2d 680 (Cal. 1983).

2. In Fields' federal petition, these claims are numbered VII (A, B, E, F, G), VIII (B, C, F, G, H, I), XIII, XVI, XIX, XXI, XXII, XXIII, XXIV, XXVIII, and XXIX respectively.

3. We further decline to address Fields' argument that the California Supreme Court's order on October 14, 1994, denying his second state habeas petition, is ambiguous. We assume, for purposes of this opinion, that the order is not ambiguous.

4. In previous cases, we have avoided the resolution of this issue. See Hayes, 103 F.3d at 75 (noting that "[w]hether the Dixon rule was sufficiently clear and consistently applied before Harris is open to some question," but declining to decide the question, holding, in a petition for writ of mandamus, that the district court's conclusion that the Dixon rule was inadequate to bar review was not clearly erroneous); Bean, 96 F.3d at 1131 (noting that "[w]hether the Dixon rule was sufficiently clear and consistently applied at the time Bean filed his direct appeal [in 1981] is open to some question," but holding that "[w]e need not resolve the issue here . . . since the California Supreme Court's order provides no basis upon which to apply the Dixon rule, if adequate, to Bean's claims.").

There is a conflict in the federal district courts in California as to whether the Dixon rule is adequate to bar federal habeas review of defaulted claims. See, e.g., Fierro v. Calderon, No. CV-94-3198-LGB, at 16 (C.D. Cal. June 12, 1996) (ruling that "the California Supreme Court's recent reevaluation of its procedural rules [in Harris and Clark] all but establishes that the Dixon rule is not adequate"); Deere v. Calderon, 890 F. Supp. 893, 901 (C.D. Cal. 1995) (noting that the Dixon rule had existed for forty years and ruling that "[p]etitioner has not offered the Court any compelling justification for disregarding the state court denial of the eight claims on the additional ground that they could have and should have been raised in petitioner's direct appeal"); Odle v. Calderon, 884 F. Supp. 1404, 1413 (N.D. Cal. 1995) (concluding that "the Dixon procedural rule has not been uniformly and regularly applied by the California Supreme Court").

5. We note that a claim barred from further state court review by the Waltreus rule would not be barred from review in federal habeas, as it would be an exhausted claim.

6. In a postcard denial, the court denies a habeas petition by stating, without discussion, that certain claims are procedurally barred, citing the relevant case (Dixon, Waltreus, or some other).

7. In re Walker, 518 P.2d 1129 (Cal. 1974) (In Bank); In re Brown, 511 P.2d 1153 (Cal. 1973) (In Bank); People v. Jones, 510 P.2d 705 (Cal. 1973) (In Bank); People v. Vaughn, 508 P.2d 318 (Cal. 1973) (In Bank); In re Fuller, 177 Cal. Rptr. 233 (Cal. Ct. App. 1981); In re Watson, 154 Cal. Rptr. 151 (Cal. Ct. App. 1979); In re Ronald E., 132 Cal. Rptr. 1 (Cal. Ct. App. 1976); In re Duran, 113 Cal. Rptr. 442 (Cal. Ct. App. 1974); In re Young, 107 Cal. Rptr. 915 (Cal. Ct. App. 1973).

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FILED
SUPERIOR/MUNICIPAL
Arraign: 11-7-95

BY

GROVER TRASK
District Attorney
County of Riverside
4075 Main Street, 1st Floor
Riverside, California 92501
Telephone (909) 275-5400

ORIGINAL

IN THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,) NO. CR. 65406
v.) INFORMATION
EDDIE FRANK PEREZ, Defendant.) CMS#: PG95278257/RPD

COUNT I

The District Attorney of the County of Riverside hereby accuses EDDIE FRANK PEREZ of a violation of Section 666 of the Penal Code, a felony, in that on or about October 5, 1995, in the County of Riverside, State of California, he did wilfully and unlawfully steal, take, and carry away the personal property of another, to wit, THE BROADWAY DEPARTMENT STORE, 3700 GALLERIA AT TYLER, RIVERSIDE; said defendant having been previously convicted of the crime of ROBBERY on November 5, 1987, in the Superior Court of the Riverside Judicial District, of the State of California and having thereafter served a term therefor in a Penal Institution and having been imprisoned therein as a condition of probation for said offense.

FIRST SPECIAL PRIOR OFFENSE [PC 667(c)&(e) and 1170.12(c)]:

The District Attorney of the County of Riverside further charges that the defendant, EDDIE FRANK PEREZ, was on or about July 1, 1992 in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of, ROBBERY, a

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GROVER TRASK
DISTRICT ATTORNEY
County of Riverside
4075 Main Street
Riverside, California

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serious and violent felony, in violation of Section 211 of the Penal Code, within the meaning of Penal Code Sections 667, subdivisions (c) and (e), and 1170.12, subdivision (c).

SECOND SPECIAL PRIOR OFFENSE [PC 667(c)&(e) and 1170.12(c)]:

The District Attorney of the County of Riverside further charges that the defendant, EDDIE FRANK PEREZ, was on or about ~~December 2,~~ June 5, 1987, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of, ROBBERY, a serious and violent felony, in violation of Section 211 of the Penal Code, within the meaning of Penal Code Sections 667, subdivisions (c) and (e), and 1170.12, subdivision (c).

GROVER TRASK
District Attorney

BRIAN J. SUSSMAN
Supervising Deputy Dist. Atty.

BJS:jw

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This must be in red to be a "CERTIFIED COPY"

Each document to which this certificate is attached is certified to be a full, true and correct copy of the original on file and of record in my office.

ARTHUR A. SIMS, CLERK
Superior/Municipal Courts
County of Riverside
State of California

Dated: AUG 12 1996

SUPERIOR/MUNICIPAL COURTS
RIVERSIDE COUNTY CALIFORNIA

Certification must be in red to be a "CERTIFIED COPY"

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State Bar No. 155922

IN THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,) NO. CR. 65406
)
Plaintiff,)
) SENTENCING MEMORANDUM
v.)
)
EDDIE FRANK PEREZ,)
)
Defendant.) (Hg: 7-12-96 D-61 8:30)

I

PROCEDURAL HISTORY

On June 5, 1996, after a jury trial, the defendant, Eddie Frank Perez, was found guilty of violating Penal Code section 666, a felony. Also found true by the jury were two allegations that the defendant had previously been convicted of robbery (Pen. Code § 211) within the meaning of Penal Code sections 667, subdivision (c) and (e), and section 1170.12, subdivision (C). Accordingly, this case falls within the so-called "three strikes" sentencing scheme set forth in Penal Code sections 667, and 1170.12.

II

THE APPLICABLE SENTENCING SCHEME

Because the defendant has twice been convicted of robbery, he faces an indeterminate term of 25 years to life. (Pen. Code

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§§ 667(e)(2), and 1170.12(c)(2).) However, in the absence of the three-strikes scheme, the sentence range for the defendant's crime would be a determinate term of 16 months, 2 or 3 years.

III

THE DEFENDANT IS STATUTORILY INELIGIBLE FOR PROBATION

Under Penal Code sections 667, subdivision (c), subsection (2), and 1170.12, subdivision (a), subsection (2) the defendant may not be placed on probation for this offense. Also, absent "unusual circumstances," Penal Code section 1203, subdivision (3), subsection (4) bars probation for the defendant, who has four times been convicted of a felony.

IV

THE INDETERMINATE TERM IS APPROPRIATE

Under sections 667 and 1170.12, the sentence for a convicted defendant with two prior strikes is an indeterminate term of 25 years to life. In enacting section 667 in March 1994, the legislature expressly stated,

> It is the intent of the legislature . . . to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses." (Pen. Code § 667(b).)

This legislative intent was overwhelmingly ratified by the People of the State of California when they enacted section 1170.12 via the initiative process in November 1994.

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Eddie Frank Perez was convicted of a felony violation of section 666 and was twice previously convicted of robbery, the first time in 1987 and the second time in 1992.[1] The legislature and the voters have quite recently made their wishes obvious with respect to such recidivist violent felons. Accordingly, the People request that the court impose the indeterminate term of 25 years to life.

Under the recent California Supreme Court decision in People v. Romero (1996) DAR 7229(6-24-96), this court has discretion to dismiss a so-called "strike prior" in the interest of justice. In reaching its decision, the Romero court stated:

> To guide the lower courts in the exercise of their discretion under section 1385(a), whether acting on their own motion or on motion of the prosecuting attorney, we emphasize the following: A court's discretion to strike prior felony conviction allegations in furtherance of justice is limited. Its exercise must proceed in strict compliance with section 1385(a), and is subject to review for abuse. (People v. Romero, supra, at p. 7240.)

The court further indicated that in determining whether to dismiss a sentencing allegation, a trial court must consider "the constitutional rights of the defendant, ~~and allegation, a trial court must consider "the constitutional rights of the defendant~~, and the interests of society represented by the People." (Id., at p. 7241.) The trial court should also consider '"the defendant's background,' 'the nature of his present offenses,' and other 'individualized considerations.' [Citations]." (Id.) Thus, while the court may strike a prior conviction allegation,

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1 The People ask the court to rely upon the evidence presented to the jury, as well as the certified documents presented to the court during the trial, as support for the factual statements made in this sentencing memorandum. Additionally, the People ask the court to rely on the manual rap sheet portion of People's Exhibit 7, which was removed from Exhibit during the trial to avoid undue prejudice to the defendant. As the court may recall, that portion of the Exhibit was retained by the People by agreement of the People, defense counsel, and the court. That portion will be resubmitted to the court as People's Exhibit 7a, and a copy is attached hereto.

GROVER TRASK
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it may do so only in the limited circumstances in which the interest of justice requires the court to do so. Such circumstances do not exist in this case.

To begin with, Eddie Frank Perez is a violent man who continuously re-offends. He has twice been convicted of robbery, in 1987 and 992. He pled guilty to section 211, and admitted the section 12022, subdivision (b) allegation, and was sentenced to three years in state prison. He was paroled to Riverside County on October 28, 1988. Parole was revoked only two months later on December 29, 1988. The defendant was again paroled to Riverside County on May 16, 1989, and parole was discharged on May 15, 1990.

On July 1, 1992, Eddie Frank Perez was again convicted of robbery, this one occurring on March 10, 1992, less than two years after his prior parole was terminated. In this 1992 conviction, he was charged with robbery (§ 211) and, again, personal use of a knife (§ 12022(b)), as well as the prior conviction. The defendant plead guilty to the robbery, with the enhancements stricken. For this second violent felony, the defendant was sentenced to the upper-term of five years in state prison.

He was paroled to Riverside County on December 30, 1994. He again violated parole in 1995 and had his parole revoked on June 8, 1995. He was again paroled to Riverside County on September 24, 1995, just 11 days before committing this crime.

The defendant's recent convictions for violent robberies, including personal use of a knife in the 1987 conviction, demonstrate the obvious threat he poses to the community. These are not crimes committed long ago, by a man who can claim rehabilitation. Since committing the 1992 robbery, the defendant has been out of custody twice, for a total of less than five months. During these times out of custody, he had his parole revoked, resulting in his return to prison, and he committed the crime for which he is now being sentenced. Additionally, the fact that the defendant has repeatedly violated his parole, with respect to both of his state prison commitments, demonstrates his

GROVER TRASK
DISTRICT ATTORNEY
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continued lawlessness and inability to function in civilized society. This man does not deserve, and the interest of just does not allow, the dismissal of either of his strike priors.

Moreover, as the court can see the defendant's rap sheet, Eddie Frank Perez, has a long history of both misdemeanor and felony convictions. The defendant's manual rap sheet begins with his incarceration at the California Youth Authority[2] in Norwalk, in April of 1975. He was paroled in September of 1995, but returned to the CYA on a parole violation approximately one year later. He has numerous misdemeanor convictions, including violating Penal Code section 653g, loitering at a school or where children are present, petty theft, disturbing the peace, vandalism, being under the influence of a controlled substance, and brandishing a deadly weapon. He also has a 1985 felony conviction for possession of a controlled substance (Health & Saf. Code § 11350.)

In the 10 years between his parole from the CYA in 1977 and his imprisonment in the state prison in 1987, Eddie Frank Perez was convicted nine times of a dozen different crimes. During that time, he went more than two years between convictions only once. This dismal record of recidivism, coupled with the defendant's outright failure on previous paroles, further militates against granting any leniency to the defendant.

CONCLUSION

The defendant should be sentenced to the indeterminate term of 25 years to life, as mandated by the legislature and the People of the State of California. The interest of justice

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2 Hereinafter referred to as CYA.

GROVER TRASK
DISTRICT ATTORNEY
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4075 Main Street
Riverside, California

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requires that we prevent the defendant, a repeatedly violent and lawless man, from preying on the citizens of this county, for as long as the law allows.

Dated: July 8, 1996

Respectfully submitted,

GROVER TRASK
District Attorney

W. CHARLES HUGHES
Deputy District Attorney

WCH:mw
Mot96-349

GROVER TRASK
DISTRICT ATTORNEY
County of Riverside
4075 Main Street
Riverside, California

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PROOF OF SERVICE BY MAIL

(Must be attached to original document at time of filing)

CASE NO. CR. 65406

I, the undersigned, say: I am a resident of or employed in the County of Riverside, over the age of eighteen years and not a party to the within action or proceeding; that my residence or business address is 4075 Main Street, Riverside, California.

That on the 8th day of July, 1996, I served a copy of the paper to which this proof of service by mail is attached, SENTENCING MEMORANDUM, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at the City of Riverside, California, addressed as follows:

MARTIN SWANSON
Deputy Public Defender
4200 Orange Street
Riverside, CA 92501

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 1996, at Riverside, California.

DECLARANT

GROVER TRASK
DISTRICT ATTORNEY
County of Riverside
4075 Main Street
Riverside, California

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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

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OL# N 9011745

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

12 M 1 U III 10
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M N BLK BRO 5-8 150 CA 8-5-1958

827 PEREZ: EDDIE FRANK

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
ALIAS: EDDIE PANCHO PEREZ; EDDIE EDWARD FRANK PEREZ; EDWARD FRANK "PAPAS"; PANCHO PAPPAS; FRANK EDDIE PEREZ;		PANCHO PAPPAS; "PANCHO" PAPAS; EDWARD PANCHITO PEREZ; EDDIE PANCHITO PEREZ;	EDWARD MICHAEL	PEREZ; "POPAS";
4-10-75	CALIF YOUTH AUTH. NORWALK,10217	EDDIE FRANK PEREZ	PLACEMENT AT TWIN PINES RANCH NOT ACCEPTABLE	FROM: RIVERSIDE CO. JUV.CRT. 9-25-75,PAROLED 10-21-76,RET.FV 2-11-77,PAROLED 8-17-79,DISCH.
3-3-76	SO RIVERSIDE C-66022/109427	EDDIE FRANK PEREZ	1)148 PC,RESIST OFFICER 2)653G PC, LOITER-PUBLIC SCHOOL	DET.JUV.HALL
11-27-77	PD CORONA 14051	EDDIE FRANK PEREZ	1)242 PC,BATT ON POLICE OFFICER 2)12020(A)PC, POSS DEADLY WEAPON	11-29-77,12020PC,DA/CA REJ.LACK OF PROB.CAUSE; 242PC,DA/CA REJ.INT.OF JUST. 12-1-77,#31128-04,JD# 33420,647(F)PC,MISD, PWC,3DS JL
12-2-77	SO RIVERSIDE D-13124/109427	EDDIE FRANK PEREZ	1)415.1 PC,DP: CHALLENGING TO FIGHT 2)653G PC,LOIT. ABOUT SCHOOLS OR OTHER PLACE W/CHILDREN	3-15-78,#31172-04,JD# 33420,653G PC, & 415PC, MISD,PG,10DS JL
--		CONTINUED PAGE 2		--

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

C-18

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

827 PAGE 2

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
1-19-78	SO RIVERSIDE D 17859	EDDIE PANCHO PEREZ	1)459 PC, COMMERCIAL BURG. 2)245(A)PC,ADW	
3-3-78	SO RIVERSIDE D20834/109427	EDDIE FRANK PEREZ	1)211 PC, ARMED ROBB 2)459 PC,BURG. RESID.	
4-5-78	SO RIVERSIDE D-22554	EDDIE FRANK PEREZ	1)10852 VC, INJ. & TAMPER WITH A VEH. 2)148 PC,RESIST ARREST	
5-7-78	CO.PROBATION DEPT RIVERSIDE #A113319-353	EDDIE FRANK PEREZ	653G PC,LOIT. ABOUT SCHOOL, MISD.	12MOS.PROB,30DS JL SUSP.
5-7-78	CO.PROBATION DEPT RIVERSIDE #A-113318-353	EDDIE FRANK PEREZ	594 PC,VANDAL. MISD.	12MOS.PROB,30DS JL SUSP.
--		CONTINUED PAGE 3		--

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

827 PAGE 3

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
11-24-78	PD CORONA 14051	EDDIE FRANK PEREZ	1)488 PC,PT 2)148 PC,OBSTR/ RESIST PUB.OFF 3)594 PC,VANDAL	11-27-78,488PC,148PC, & 594PC,DA/CA REJ. 1-29-79,490.5PC, & 606PC,PROC.SUSP,BWI
1-31-79	PD CORONA 14051	EDDIE FRANK PEREZ	1)653G PC,LOIT. WHERE CHILDREN PRESENT 2)484/490.5 PC, THEFT:RETAIL MERCH.	(6-7-78),#31680-04, JD#33420,653G PC,MISD, PNC,12MOS.PROB,30DS JL
1-12-80	PD EL MONTE 1 DR 43915/80-0165	EDDIE FRANK PEREZ	242 PC,BATT	
10-19-80	PD CORONA 14051	FRANK EDDIE PEREZ	WRT#33250-04 1)484(A)PC, THEFT:PERS. PROP. 2)490.5 PC, THEFT:MDSE	(1-29-79),#33250-04, JD#33420,148PC, & 606PC,MISD,DISM; 484/490.5PC,MISD,PG, 24MOS.PROB,30DS JL, RSTN.
5-18-81	SO RIVERSIDE E25990/109427	EDDIE FRANK PEREZ	148 PC,RESIST ARREST (ARR BY PD CORONA)	5-19-81,#39959-04,JD# 33420,415PC,MISD,PG, 2DS JL
--		CONTINUED PAGE 4		--

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

000318

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

827 PAGE 4

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
7-10-81	SO RIVERSIDE E-30929/967919	EDWARD MICHAEL PEREZ	602 PC,TRESP: UPON LANDS ENUMERATED	
7-17-81	SO RIVERSIDE E 32288/967919	EDWARD FRANK PEREZ	245A PC,ADW	6-7-82,#106751,JD# 33460,245A PC,MISD, DISM.
5-14-82	SO RIVERSIDE E65814/967919	EDDIE FRANK PEREZ	1)166.4 PC, CONT.OF COURT 2)245A PC,ADW 3)242 PC,BATT	
5-11-83	SO RIVERSIDE E91318/967919	EDWARD PANCHITO PEREZ	20002(A)VC, HIT/RUN,MISD.	
7-23-83	FD CORONA 14051	EDDIE FRANK PEREZ	594(A)PC,VANDAL	9-29-83,#46884-04,JD# 33420,166.4PC,MISD, DISM;594PC,MISD,PG,
8-5-83	FD CORONA 14041	EDDIE FRANK PEREZ	417(A)PC,EXH. DEADLY WEAPON/ F'ARM	9-29-83,#46986-04,JD# 33420,415PC,MISD,DISM; 417(A)(1)PC,MISD,PG, 36MOS.PROB,60DS JL
--		CONTINUED PAGE 5		--

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

C-21

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

000319

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

827 PAGE 5

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
5-2-85	SO RIVERSIDE F84721	EDWARD FRANK PEREZ	1)11351 H&S, POSS SUBS. FOR SALE 2)11550(A)H&S, UNDER INFLU SUBS.	6-17-85,#CR-23750,JD# 33100,11550(A)H&S,MISD, DISM;11350H&S,FEL,PG, 48MOS.PROB,365DS JL, FW,STAYED
9-29-86	SO RIVERSIDE G61288/967919	EDDIE FRANK PEREZ	11550(A)H&S, USE/UNDER INFL CONTR.SUBS.	11-12-86,#177672,JD# 33460,11550(A)H&S,MISD, PG,36MOS.PROB,90DS JL
9-16-86	SO RIVERSIDE G62577	EDDIE FRANK PEREZ	1)11351 H&S, POSS NARC. CONTR.SUBS. FOR SALE 2)11550(A)H&S, USE/UNDER INFL CONTR.SUBS. 3)12020 PC, POSS/MFG/SELL DANGEROUS WPN	
11-25-86	SO RIVERSIDE G73275	EDDIE FRANK PEREZ	211 PC,ROBB	12-2-87,#CR-26279,JD# 33100,211/12022(B)PC, FEL,PG,3YRS.TT ST.PRIS.
4-6-87	PATTON STATE HOSPITAL 139353	EDDIE FRANK PEREZ	1370 PC	
--		CONTINUED PAGE 6		--

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

C-22

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P.O. BOX 13417, SACRAMENTO

000320

The following CII record, NUMBER 4 765 414 IS FOR OFFICIAL USE ONLY

827 PAGE 6

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
12-8-87	CALIF DEPT CORR D-72587	EDDIE PEREZ	CS#26279 CT.1,ROBB, 211PC,W/USE OF DW,12022(B)PC	FROM: RIVERSIDE CO. TERM: 3YRS. 10-28-88,PAROLED TO RIVERSIDE CO. 12-1-88,PV/RTC 6-15-90,DISCH.
9-10-91	PD CORONA 3806	EDDIE FRANK PEREZ	WRT#CR23750 VIOL.PROB/ 11351 H&S	REFER TO 5-2-85 ENTRY
12-9-91	PD CORONA 91-5051	EDDIE FRANK PEREZ	WRT#CR23750 11350 H&S	REFER TO 5-2-85 ENTRY
3-10-92	PD CORONA 92 872	EDDIE FRANK PEREZ	211 PC,ROBB	7-1-92,#CR42863,JD# 33100,211PC,FEL,PG, 5YRS.TT ST.PRIS,RSTN.
7-14-92	CALIF DEPT CORR H-40183	EDDIE FRANK PEREZ	CS#CR42863 CT.1,ROBB 2ND, 212.5(B)PC	FROM: RIVERSIDE CO. TERM: 5YRS.

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

C-23

1 CT- 000321

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 29

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside
COURT ID: 2 3 1 0 0
BRANCH: Superior

FILED
SUPERIOR/MUNICIPAL COURT
OF RIVERSIDE
JUL 22 1996

PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: EDDIE FRANK PEREZ
AKA:
☒ PRESENT ☐ NOT PRESENT

CASE NUMBER(S): CR65406 - A; - B; - C; - D; - E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT
AMENDED ABSTRACT ☐

DATE OF HEARING AND SENTENCING	DEPT NO	JUDGE	CLERK
071996	61	PATRICK F. MAGERS	S. Johnson

REPORTER	COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT	PROBATION NO. OR PROBATION OFFICER
D O'LEARY	CHARLES HUGHES	DPD-MARTIN SWANSON	

1 DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY / WOBBLERS/ED).
☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES)

COUNT	CODE	SECTION NUMBER	CRIME	DATE OF CONVICTION (MO DAY YEAR)	CONVICTED BY (J C T)	SENTENCE RELATION (U S C)	PRINCIPAL OR CONSECUTIVE TIME IMPOSED (YEARS MONTHS)
1	PC	666	Petty theft w/prior	06 09 96	X	U Principal	A

2 ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (Identify on the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAD STATUS, ETC.
For each count list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385.
Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

3 ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (Identify § 667-series) and OTHER.
List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) for § 667.5(b) 2 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under §1385. Add time to these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total
Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

4 INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5 OTHER ORDERS
ALLEGED PRIOR/STRIKE 667(C)(E)PC
Use additional sheets of plain paper if necessary.

6 TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A)
7 TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE BASED-TERM LIMIT, ETC. (Do not include § 654 stays or discretionary stays of terms for enhancements.)
8 TOTAL TERM IMPOSED: A
9 EXECUTION OF SENTENCE IMPOSED
A ☐ AT INITIAL SENTENCING HEARING B ☐ AT RESENTENCING PURSUANT TO DECISION ON APPEAL C ☐ AFTER REVOCATION OF PROBATION D ☐ AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC §1170(d)) E ☐ OTHER _____

10 DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR)	TOTAL DAYS	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	STATE INSTITUTIONS
07 19 96	324 INCLUDING	282	42	☐ CMF ☐ CTF

11 DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF
☐ FORTHWITH ☐ AFTER 48 HOURS (EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS)
☐ CALIF INSTITUTION FOR WOMEN - FRONTERA ☐ CALIF MEDICAL FACILITY - VACAVILLE ☐ SAN QUENTIN ☐ CALIF INSTITUTION FOR MEN - CHINO ☐ CHINO VOC INST
☐ OTHER (SPECIFY): _____

RIVERSIDE COUNTY CALIFORNIA

CLERK OF THE SUPERIOR COURT
I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE	DATE
[signature]	07/22/96

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

ABSTRACT OF JUDGMENT - PRISON COMMITMENT
FORM DSL 290

DISTRIBUTION: PINK COPY COURT FILE; YELLOW COPY DEPARTMENT OF CORRECTIONS; WHITE COPY ADMINISTRATIVE OFFICE OF THE COURT

C-24

This must be in red to be a
"CERTIFIED COPY"

Each document to which this certificate is attached is certified to be a full, true and correct copy of the original on file and of record in my office.

ARTHUR A. SIMS, CLERK
Superior/Municipal Courts
County of Riverside
State of California

Dated: AUG 12 1996

Certification must be in red to be a
"CERTIFIED COPY"

THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
OF RIVERSIDE COUNTY

People of the State of California
Vs.
MICHAEL WAYNE RIGGS

Case No. CR66167

MINUTE ORDER

Report and Sentencing (SENT) Date:11/15/96 Time: 1:33 Div:31

Charges: 1) 666 PC-F C, 2) 4149 BP-M C, 999) 667.5(B) PC-F A, 999) 667.5(

Honorable DENNIS A. MCCONAGHY Presiding.
Clerk: M. Faucher.
Court Reporter: D.Bellanca
People Represented By M. RUSHTON, DDA.
Defendant Represented By CDP-EDWARD MUNOZ (present by telephone).
Defendant Present.
At 11:00, the following proceedings were held:
Matter is continued re: JOINT STIP, hearing continued to
11/21/96, @ 13:30 in Dept. 31.(CONT)
ALL PARTIES STIP TO 1:30 P.M.
COUNSEL FOR DEFENSE NOTIFIED BY PHONE OF NEXT
COURT DATE.
Defendant Ordered to Return.
Bail To Remain as fixed.
Remains Remanded To custody of Riverside Sheriff.
Jail Minute Order sent
MINUTE ORDER OF COURT PROCEEDING

Dispo

THE CONSOLIDATED SUPERIOR/MUNICI..L COURTS
OF RIVERSIDE COUNTY

People of the State of California
Vs.
MICHAEL WAYNE RIGGS

Case No. CR66167

MINUTE ORDER

Report and Sentencing (SENT) Date:11/21/96 Time: 1:30 pm Div:31

Charges: 1) 666 PC-F C, 2) 4149 BP-M C, 999) 667.5(B) PC-F A, 999) 667.5(

Honorable DENNIS A. MCCONAGHY Presiding.
Clerk: M. Faucher.
Court Reporter: G. BREWER
People Represented By M. RUSHTON, DDA.
Defendant Represented By CDP-EDWARD MUNOZ.
Defendant Present.
At 13:40, the following proceedings were held:
Matter is continued re: JOINT STIP, hearing continued to
11/26/96, @ 8:30 in Dept. 31.(CONT)
Defendant Ordered to Return.
Bail To Remain as fixed.
Remains Remanded To custody of Riverside Sheriff.
Jail Minute Order sent
MINUTE ORDER OF COURT PROCEEDING

Dispo

D-27

THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
OF RIVERSIDE COUNTY

People of the State of California
Vs.
MICHAEL WAYNE RIGGS

Case No. CR66167

MINUTE ORDER

Report and Sentencing (SENT) Date:11/26/96 Time: 8:30 am Div:31

Charges: 1) 666 PC-F C, 2) 4149 BP-M C, 999) 667.5(B) PC-F K, 999) 667.5(

Honorable DENNIS A. MCCONAGHY Presiding.
Clerk: M. Faucher.
Court Reporter: D.Bellanca
People Represented By M. RUSHTON, DDA.
Defendant Represented By CDP-EDWARD MUNOZ.
Defendant Present.
At 8:51, the following proceedings were held:
Court Has Read and considered the probation officer's report.
Defendant Waives Arraignment For pronouncement of judgment.
Defendant Requests Immediate Sentence.
Probation Is Denied and sentence is imposed as follows: (SENT)
DEFENDANT IS SENTENCED PURSUANT TO PENAL CODE SECTION 667(c) &
(e).
As To Count 01 the court imposes the Indeterminate sentence of
25 years to Life.
Principal Count Deemed to be Count # 01.
For The Charge(s) 02.
Sentenced to Riverside County Jail for the term of 90 days.
Count(s) 02 to Run ConCurrent
Sentenced to State Prison for a total Indeterminate sentence of
25 YEARS TO LIFE.
Court Orders Prior(s) 1-3 Stricken.
CREDIT FOR TIME SERVED of 411 actual days plus 61 days pursuant
2933.1 PC for a total of 472 days.
RESTITUTION FINE Imposed Pur 1202.4(B) PC Penal Code in the sum
of $1000.00 payable to the Restitution Fund.
FURTHER ORDER: Pay restitution fine of $1000.00 pur to 1202.45
PC suspended pending satisfactory completion of parole and/or
probation.
Filed: PROBATION REPORT
Defendant Does Not have the financial ability to repay the
County for the services of appointed counsel.
Defendant Advised of Appeal rights.
Advised of Parole Rights.
Sheriff to Deliver Defendant to CDC at CHINO

D-28

000326

11/27/96 Page: 2

Case Number : CR66167 People vs. MICHAEL RIGGS

Remains Remanded To custody of Riverside Sheriff.
Jail Minute Order sent
MINUTE ORDER OF COURT PROCEEDING

Dispo

D-29

MICHAEL W. RIGGS #9535161
RIV. CO. JAIL / R.P.D.C. #52-82
P.O B. #710 / 4000 Orange ST
Riverside, CA. 92502
IN PROPRIA PERSONA
BY A PERSON IN STATE CUSTODY
1258 P.C., RI. of CT. "56.5(b), "201(1)

ATTORNEY OF RECORD
EDWARD R. MUNOZ - ANAHEIM

ORIGINAL TO COURT (13355)

000327

LD

FILED
SUPERIOR/MUNICIPAL COURT
OF RIVERSIDE COUNTY
NOV 25 1996

IN THE CONSOLIDATED RIVERSIDE COURTS
COUNTY OF RIVERSIDE / STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIF., (PLAINTIFFS) vs. MICHAEL W. RIGGS (DEFENDANT-APPELLANT)

CS.NO. "CR 66167

NOTICE OF APPEAL

[X] Designation of DAILY TRANSCRIPTS
[X] APPOINTMENT of Counsel on APPEAL (IN FORMA PAUPERIS)

PLEASE TAKE NOTICE, this 21ST DAY OF NOVEMBER 1996, THAT DEFENDANT, MICHAEL W. Riggs, (PRO-SE) HEREBY APPEALS TO THE CALIFORNIA COURT OF APPEALS, THIS COURTS DENIALS OF ALL "MOTIONS", the "JUDGEMENT OF CONVICTION", AND "SENTENCE" RENDERED IN THE ABOVE ENTITLED CASE.

DEFENDANT ALSO 'MOVES' FOR THE "APPOINTMENT OF COUNSEL ON APPEAL". IN SUPPORT: I DECLARE THAT I AM "LEGALLY INDIGENT" WITHOUT FUNDS, SAVINGS, BONDS, OR ANY ASSETTS OF WORTH TO AFFORD COUNSEL AS I AM A PAUPER.

SWORN UNDER PENALTY OF PURJURY, BY: Michael W. Riggs
EXECUTED: PRO-SE DEFENDANT/DECLARANT MICHAEL W. RIGGS

DESIGNATION OF TRANSCRIPTS

IN SUPPORT, DEFENDANT DESIGNATES "ALL DAILY TRANSCRIPTS" BEGINNING WHEN MOTIONS WERE HEARD FROM THE CLERKS AND REPORTERS RECORDS BEGINNING JUNE 14, 1996, AND ALL DATES THEREAFTER THROUGH TRIAL AND SENTENCING WHERE MATTERS OR ARGUMENTS TO BE APPEALED WERE HEARD OR DECIDED. EXECUTED & SUBMITTED: Michael W. Riggs
(1258 P.C.) DATED: NOVEMBER 21ST, 1996 MICHAEL W. RIGGS PRO-SE Defendant - Appellant

D-30

ABSTRACT OF JUDGMENT - PRISON COMMITMENT
INDETERMINATE SENTENCE

000328

FORM CR 292

FILED
SUPERIOR/MUNICIPAL COURT
OF RIVERSIDE COUNTY
DEC 2 1996

XXX SUPERIOR
MUNICIPAL
JUSTICE

COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

BRANCH OR JUDICIAL DISTRICT: CONSOLIDATED-WESTERNDIVISON

COURT (I.D.) 3131000

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: MICHAEL WAYNE RIGGS
AKA:

XXX PRESENT ☐ NOT PRESENT

CR66167 -A
-B
-C
-D
-E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT
AMENDED ABSTRACT ☐

DATE OF HEARING (MO) (DAY) (YR): 11 26 96
DEPT NO: 31
JUDGE: DENNIS A. MCCONAGHY
CLERK: M. FAUCHER
REPORTER: D. BELLANCA
COUNSEL FOR PEOPLE: M. RUSHTON, DDA
COUNSEL FOR DEFENDANT: CDP-EDWARD MUNOZ
PROBATION NO. OR PROBATION OFFICER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES: (NUMBER OF PAGES)
☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION MO	DAY	YEAR	CONVICTED BY JURY	COURT TRIAL	PLEA	CONCURRENT	CONSECUTIVE	1/3 STRIKE
1	PC	666	PETTY THEFT W/PRIOR	95	09	05	96	X					

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.: For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385.
Add up time for enhancements on each line and enter total in right-hand column.

Count	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER:
List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667(b)-(i), list § 667(b)-(i) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total
667.5(B)	5	667.5(B)	5	667.5(B)	5					
Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total

4. Defendant was sentenced to State Prison for an indeterminate term:
A. ☐ For LIFE WITHOUT THE POSSIBILITY OF PAROLE on count(s) _____.
B. ☐ For LIFE WITH POSSIBILITY OF PAROLE on count(s) _____.
C. ☐ For 15 years to life, WITH POSSIBILITY OF PAROLE on count(s) _____.
D. XXX For 25 years to life, WITH POSSIBILITY OF PAROLE on count(s) 1.
E. ☐ For other term prescribed by law on count(s) _____. (Specify term on separate sheet if necessary.)
PLUS enhancement time shown above.
5. ☐ Indeterminate sentence shown on this abstract to be served ☐ consecutive to ☐ concurrent with any prior incompleted sentence(s).
6. Other Orders: (List all consecutive/concurrent sentence relationships, fines, etc. if not shown above)

COUNT 2 SENTENCED TO RIVERSIDE COUNTY JAIL FOR THE TERM OF 90 DAYS to run concurrent

7. ☐ The [illegible] advised the defendant of appeal rights in accordance with rule 470, California Rules of Court. (AFTER TRIAL ONLY)
8. EXECUTION OF SENTENCE IMPOSED: XXX AT INITIAL SENTENCING ☐ A. RESENTENCING PURSUANT TO DECISION ON APPEAL ☐ B. AFTER REVOCATION OF PROBATION ☐ C. AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(d)) ☐ D. OTHER
9. DATE OF PROBATION OR SUSPENSION OF IMPOSITION OF SENTENCE: 11 26 96
CREDIT FOR TIME SPENT IN CUSTODY: TOTAL DAYS 472 INCLUDING ACTUAL LOCAL TIME 411 LOCAL CONDUCT CREDITS 61 2933.1PC STATE INSTITUTIONS ☐ DMH ☐ CDC
10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED XXX FORTHWITH ☐ AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT: ☐ CALIF. INSTITUTION FOR WOMEN—FRONTERA ☐ WASCO ☐ OTHER (SPECIFY) ☐ CCWF—CHOWCHILLA ☐ SAN QUENTIN XXX CALIF. INSTITUTIONS FOR MEN—CHINO ☐ R.J. DONAHU ☐ DEUEL VOC. INST.

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.
CLERK OF THE COURT
DEPUTY'S SIGNATURE
DATE 12/02/96

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

Form Approved by the Judicial Council of California
ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE
CR 292
WHITE—COURT FILE
YELLOW COPY—DEPARTMENT OF CORRECTIONS
Pen. C. § 1213.5

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RIVERSIDE, CALIFORNIA; NOVEMBER 26, 1996

THE COURT: Call the case of People versus Riggs.

MR. MUNOZ: Good morning, your Honor. Edward Munoz appearing on behalf of Mr. Riggs. Mr. Riggs is present in custody, your Honor.

MR. RUSHTON: Mike Rushton for the People, your Honor. Good morning.

THE COURT: Okay. Getting the two of you here at the same time has been quite a problem.

MR. RUSHTON: Yes, it has been.

MR. MUNOZ: Well, a great event has taken place, as I understand, without a hitch.

THE COURT: This being the time and place set for pronouncement of judgment, the Court has read and considered the probation officer's report.

Either side wish to be heard?

MR. MUNOZ: Your Honor, I have submitted a motion pursuant to 1385 for this Court to exercise discretion striking the priors on behalf of Mr. Riggs.

Has the Court received that motion?

THE COURT: I have, and I have read it.

Have the People received their copy of the motion?

MR. RUSHTON: Yes.

THE COURT: All right. Go ahead, sir.

MR. MUNOZ: Your Honor, the basis -- the

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gravament of the request for this court to exercise its discretion pursuant to Section 1385 of the Penal Code is the fact that Mr. Riggs is a drug dependant individual, had a circumstance which occurred in his life which was a little bit different than other people to which may come before this Court. The trying death of his son precipitated his use of drugs, which was not an excuse for dealing with that type of trauma, but certainly explains the life that he lead as a drug dependant individual.

The strikes which are alleged in the underlying issue arose out of a 24 or 48-hour crime spree, which was totally uncharacteristic of his criminal history. The open case for which this Court heard the jury trial of a petty theft of $22 of vitamins is not deserving of a 25-years-to-life sentence.

I would also indicate, as the Court has read, that very proportionate of the sentence, that there was another gentleman with a much more herendous record than Mr. Riggs that had a similar offense of petty theft, that being the case of People versus Eddie Perez. And this -- in this Court's jurisdiction in which the Court in its wisdom sentencing Mr. Perez did not feel the 25 to life was a deserving sentence.

THE COURT: In this courtroom?

MR. MUNOZ: No. No, in this jurisdiction.

THE COURT: Okay.

MR. MUNOZ: I don't -- I can't recall where the Honorable Magers sits.

CASE NO. CR-661

CLERK'S CERTIFICATION OF RECORD

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE: ss

I, Clerk of the Consolidated Muncipal/Superior Courts of California, County of Riverside, custodian of the records of said Court, do hereby certify the foregoing to be a full, true and correct CLERK'S TRANSCRIPT ON APPEAL, as specifically identified on the Index Pages, of the official record on the above numbered action.

IN WITNESS WHEREOF, I hereunto set my hand and affixed the seal of said Court this 18TH day of February, 1997.

L. Dotson

L. Dotson

Appendix #D-34